

**Introduced by Senators Nielsen and Stone**

January 5, 2016

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An act to amend Sections 4681.6, 4689.8, 4691.9, and 4860 of, and to add Sections 4681.2, 4690.7, 4793, 4794, and 14105.194 to, the Welfare and Institutions Code, relating to human services financing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 818, as introduced, Nielsen. Developmental services: Medi-Cal: rate increases.

The Lanterman Developmental Disabilities Services Act requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities. Under existing law, the regional centers purchase needed services for individuals with developmental disabilities through approved service providers or arrange for those services through other publicly funded agencies. Existing law establishes specified rates to be paid to certain service providers and the rates to be paid for certain developmental services. Existing law requires that rates to be paid to other developmental service providers either be set by the department or negotiated between the regional center and the service provider. Existing law prohibits certain provider rate increases, but authorizes increases to those rates as necessary to adjust employee wages to meet the state minimum wage law and to provide paid sick leave.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid

Program provisions. Existing law requires, except as otherwise provided, Medi-Cal provider payments to be reduced, as specified.

This bill would appropriate certain sums to the State Department of Developmental Services to provide a 10% rate increase for certain developmental service providers and regional center operating budgets, and would appropriate certain sums to the State Department of Health Care Services to restore rates paid to Medi-Cal providers to those levels in effect prior to the implementation of the provider rate reductions. The bill would require the Director of Finance to calculate the amounts necessary to provide these rate increases. The bill would make these rate increases retroactive to July 1, 2015.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares that the  
2 Budget Act of 2015 did not prioritize community services for  
3 Californians with intellectual or developmental disabilities or better  
4 access to care for Medi-Cal recipients.

5 (b) Based on estimates provided by the nonpartisan Legislative  
6 Analyst's Office in its November 2015 report "The 2016-17  
7 Budget: California's Fiscal Outlook," California's General Fund  
8 revenues generate sufficient resources for California to improve  
9 the quality and availability of care and assistance provided through  
10 community-based developmental services and through the  
11 Medi-Cal program.

12 (c) Therefore, it is the intent of the Legislature that the  
13 unanticipated General Fund revenues received by the state shall  
14 be used to increase funding for community services provided to  
15 individuals with intellectual or developmental disabilities and to  
16 increase reimbursement rates for Medi-Cal providers.

17 SEC. 2. Section 4681.2 is added to the Welfare and Institutions  
18 Code, to read:

19 4681.2. Notwithstanding any other law, the department shall  
20 increase the rates set for community care facilities serving persons  
21 with developmental disabilities to implement the rate increase  
22 provided pursuant to the operation of Section 4793.

1 SEC. 3. Section 4681.6 of the Welfare and Institutions Code  
2 is amended to read:

3 4681.6. (a) Notwithstanding any other law or regulation,  
4 commencing July 1, 2008:

5 (1) A regional center shall not pay an existing residential service  
6 provider, for services where rates are determined through a  
7 negotiation between the regional center and the provider, a rate  
8 higher than the rate in effect on June 30, 2008, unless the increase  
9 is required by a contract between the regional center and the vendor  
10 that is in effect on June 30, 2008, or the regional center  
11 demonstrates that the approval is necessary to protect the  
12 consumer's health or safety and the department has granted prior  
13 written authorization.

14 (2) A regional center shall not negotiate a rate with a new  
15 residential service provider, for services where rates are determined  
16 through a negotiation between the regional center and the provider,  
17 that is higher than the regional center's median rate for the same  
18 service code and unit of service, or the statewide median rate for  
19 the same service code and unit of service, whichever is lower. The  
20 unit of service designation shall conform with an existing regional  
21 center designation or, if none exists, a designation used to calculate  
22 the statewide median rate for the same service. The regional center  
23 shall annually certify to the department its median rate for each  
24 negotiated rate service code, by designated unit of service. This  
25 certification shall be subject to verification through the  
26 department's biennial fiscal audit of the regional center.

27 (b) Notwithstanding subdivision (a), commencing July 1, 2014,  
28 regional centers may negotiate a rate adjustment with residential  
29 service providers regarding rates that are otherwise restricted  
30 pursuant to subdivision (a), if the adjustment is necessary in order  
31 to pay employees no less than the minimum wage as established  
32 by Section 1182.12 of the Labor Code, as amended by Chapter  
33 351 of the Statutes of 2013, and only for the purpose of adjusting  
34 payroll costs associated with the minimum wage increase. The  
35 rate adjustment shall be specific to the unit of service designation  
36 that is affected by the increased minimum wage, shall be specific  
37 to payroll costs associated with any increase necessary to adjust  
38 employee pay only to the extent necessary to bring pay into  
39 compliance with the increased state minimum wage, and shall not  
40 be used as a general wage enhancement for employees paid above

1 the minimum wage. Regional centers shall maintain documentation  
2 on the process to determine, and the rationale for granting, any  
3 rate adjustment associated with the minimum wage increase.

4 (c) Notwithstanding subdivision (a), commencing July 1, 2015,  
5 regional centers may negotiate a rate adjustment with residential  
6 service providers regarding rates that are otherwise restricted  
7 pursuant to subdivision (a), if the adjustment is necessary to  
8 implement Article 1.5 (commencing with Section 245) of Chapter  
9 1 of Part 1 of Division 2 of the Labor Code, as added by Chapter  
10 317 of the Statutes of 2014. The rate adjustment may be applied  
11 only if a minimum of 24 hours or three days of paid sick leave per  
12 year was not a benefit provided to employees as of June 30, 2015,  
13 and shall be specific to payroll costs associated with any increase  
14 necessary to compensate an employee up to a maximum of 24  
15 hours or three days of paid sick leave in each year of employment.

16 (d) *Notwithstanding subdivision (a), regional centers shall*  
17 *increase the rates paid to residential service providers, for services*  
18 *where rates are determined through a negotiation between the*  
19 *regional center and the provider, to implement the rate increase*  
20 *provided pursuant to the operation of Section 4793.*

21 ~~(d)~~

22 (e) For purposes of this section, “residential service provider”  
23 includes Adult Residential Facilities for Persons with Special  
24 Health Care Needs, as described in Section 4684.50.

25 ~~(e)~~

26 (f) This section shall not apply to those services for which rates  
27 are determined by the State Department of Health Care Services,  
28 or the State Department of Developmental Services, or are usual  
29 and customary.

30 SEC. 4. Section 4689.8 of the Welfare and Institutions Code  
31 is amended to read:

32 4689.8. (a) Notwithstanding any other ~~provision of law or~~  
33 regulation, commencing July 1, 2008:

34 ~~(a) No~~

35 (1) A regional center ~~may~~ *shall not* pay an existing supported  
36 living service provider, for services where rates are determined  
37 through a negotiation between the regional center and the provider,  
38 a rate higher than the rate in effect on June 30, 2008, unless the  
39 increase is required by a contract between the regional center and  
40 the vendor that is in effect on June 30, 2008, or the regional center

1 demonstrates that the approval is necessary to protect the  
2 consumer's health or safety and the department has granted prior  
3 written authorization.

4 ~~(b) No~~

5 (2) A regional center ~~may~~ *shall not* negotiate a rate with a new  
6 supported living service provider, for services where rates are  
7 determined through a negotiation between the regional center and  
8 the provider, that is higher than the regional center's median rate  
9 for the same service code and unit of service, or the statewide  
10 median rate for the same service code and unit of service,  
11 whichever is lower. The unit of service designation shall conform  
12 with an existing regional center designation or, if none exists, a  
13 designation used to calculate the statewide median rate for the  
14 same service. The regional center shall annually certify to the State  
15 Department of Developmental Services its median rate for each  
16 negotiated rate service code, by designated unit of service. This  
17 certification shall be subject to verification through the  
18 department's biennial fiscal audit of the regional center.

19 *(b) Notwithstanding subdivision (a), regional centers shall*  
20 *increase the rates paid to supported living service providers, for*  
21 *services where rates are determined through a negotiation between*  
22 *the regional center and the provider, to implement the rate increase*  
23 *provided pursuant to the operation of Section 4793.*

24 SEC. 5. Section 4690.7 is added to the Welfare and Institutions  
25 Code, to read:

26 4690.7. Notwithstanding any other law, the department shall  
27 increase the rates set for nonresidential service providers to  
28 implement the rate increase provided pursuant to the operation of  
29 Section 4793.

30 SEC. 6. Section 4691.9 of the Welfare and Institutions Code  
31 is amended to read:

32 4691.9. (a) Notwithstanding any other law or regulation,  
33 commencing July 1, 2008:

34 (1) A regional center shall not pay an existing service provider,  
35 for services where rates are determined through a negotiation  
36 between the regional center and the provider, a rate higher than  
37 the rate in effect on June 30, 2008, unless the increase is required  
38 by a contract between the regional center and the vendor that is in  
39 effect on June 30, 2008, or the regional center demonstrates that

1 the approval is necessary to protect the consumer's health or safety  
2 and the department has granted prior written authorization.

3 (2) A regional center shall not negotiate a rate with a new service  
4 provider, for services where rates are determined through a  
5 negotiation between the regional center and the provider, that is  
6 higher than the regional center's median rate for the same service  
7 code and unit of service, or the statewide median rate for the same  
8 service code and unit of service, whichever is lower. The unit of  
9 service designation shall conform with an existing regional center  
10 designation or, if none exists, a designation used to calculate the  
11 statewide median rate for the same service. The regional center  
12 shall annually certify to the State Department of Developmental  
13 Services its median rate for each negotiated rate service code, by  
14 designated unit of service. This certification shall be subject to  
15 verification through the department's biennial fiscal audit of the  
16 regional center.

17 (b) Notwithstanding subdivision (a), commencing July 1, 2014,  
18 regional centers may negotiate a rate adjustment with providers  
19 regarding rates if the adjustment is necessary in order to pay  
20 employees no less than the minimum wage as established by  
21 Section 1182.12 of the Labor Code, as amended by Chapter 351  
22 of the Statutes of 2013, and only for the purpose of adjusting  
23 payroll costs associated with the minimum wage increase. The  
24 rate adjustment shall be specific to the unit of service designation  
25 that is affected by the increased minimum wage, shall be specific  
26 to payroll costs associated with any increase necessary to adjust  
27 employee pay only to the extent necessary to bring pay into  
28 compliance with the increased state minimum wage, and shall not  
29 be used as a general wage enhancement for employees paid above  
30 the increased minimum wage. Regional centers shall maintain  
31 documentation on the process to determine, and the rationale for  
32 granting, any rate adjustment associated with the minimum wage  
33 increase.

34 (c) Notwithstanding any other law or regulation, commencing  
35 January 1, 2015, rates for personal assistance and supported living  
36 services in effect on December 31, 2014, shall be increased by  
37 5.82 percent, subject to funds specifically appropriated for this  
38 increase for costs due to changes in federal regulations  
39 implementing the federal Fair Labor Standards Act of 1938 (29  
40 U.S.C. Sec. 201 et seq.). The increase shall be applied as a

percentage, and the percentage shall be the same for all applicable providers. As used in this subdivision, both of the following definitions shall apply:

(1) "Personal assistance" is limited only to those services provided by vendors classified by the regional center as personal assistance providers, pursuant to the miscellaneous services provisions contained in Title 17 of the California Code of Regulations.

(2) "Supported living services" are limited only to those services defined as supported living services in Title 17 of the California Code of Regulations.

(d) Notwithstanding subdivision (a), commencing July 1, 2015, regional centers may negotiate a rate adjustment with existing service providers for services for which rates are determined through negotiation between the regional center and the provider, if the adjustment is necessary to implement Article 1.5 (commencing with Section 245) of Chapter 1 of Part 1 of Division 2 of the Labor Code, as added by Chapter 317 of the Statutes of 2014. The rate adjustment may be applied only if a minimum of 24 hours or three days of paid sick leave per year was not a benefit provided to employees as of June 30, 2015, and shall be specific to payroll costs associated with any increase necessary to compensate an employee up to a maximum of 24 hours or three days of paid sick leave in each year of employment.

*(e) Notwithstanding subdivision (a), regional centers shall increase the rates paid to service providers, for services where rates are determined through a negotiation between the regional center and the provider, to implement the rate increase provided pursuant to the operation of Section 4793.*

~~(e)~~

(f) This section shall not apply to those services for which rates are determined by the State Department of Health Care Services, or the State Department of Developmental Services, or are usual and customary.

SEC. 7. Section 4793 is added to the Welfare and Institutions Code, immediately following Section 4792, to read:

4793. (a) (1) The Director of Finance shall, in consultation with the State Department of Developmental Services, calculate the amount necessary to provide a 10 percent rate increase to community care facilities serving persons with developmental

1 disabilities, residential service providers, supported living service  
2 providers, nonresidential service providers, other service providers,  
3 and supported employment service providers, and regional center  
4 operating budgets. Only those developmental services providers  
5 who had a contract with a regional center that was in effect as of  
6 July 1, 2015, shall be considered in this calculation.

7 (2) The amount calculated pursuant to paragraph (1) is hereby  
8 appropriated to the State Department of Developmental Services  
9 for the purpose of providing rate increases to service providers  
10 identified in paragraph (1) and increasing regional center operating  
11 budgets.

12 (b) (1) The Director of Finance shall, in consultation with the  
13 State Department of Health Care Services, calculate the amount  
14 needed to restore the rates paid to affected Medi-Cal providers to  
15 the levels in effect prior to the reductions imposed by Sections  
16 14105.07, 14105.191, 14105.192, and 14105.193.

17 (2) The amount calculated pursuant to paragraph (1) is hereby  
18 appropriated to the State Department of Health Care Services to  
19 restore the rates paid to affected Medi-Cal providers to the levels  
20 in effect prior to the reductions imposed by Sections 14105.07,  
21 14105.191, 14105.192, and 14105.193. These funds shall be  
22 distributed on an equitable basis among eligible Medi-Cal providers  
23 and managed care health plans that contract with the State  
24 Department of Health Care Services pursuant to Chapter 7  
25 (commencing with Section 14000) or Chapter 8 (commencing with  
26 Section 14200) of Part 3 of Division 9.

27 (c) The rate increases calculated and provided pursuant to this  
28 section shall be retroactive to July 1, 2015.

29 SEC. 8. Section 4794 is added to the Welfare and Institutions  
30 Code, immediately following Section 4793, to read:

31 4794. Notwithstanding any other law, the department shall  
32 increase funding provided to a regional center for the regional  
33 center's operating budget to implement the rate increase provided  
34 pursuant to the operation of Section 4793.

35 SEC. 9. Section 4860 of the Welfare and Institutions Code is  
36 amended to read:

37 4860. (a) (1) ~~The~~ *Except as provided in subdivision (f), the*  
38 hourly rate for supported employment services provided to  
39 consumers receiving individualized services shall be thirty dollars  
40 and eighty-two cents (\$30.82).



1 (2) Job coach hours spent in travel to consumer worksites may  
2 be reimbursable for individualized services only when the job  
3 coach travels from the vendor's headquarters to the consumer's  
4 worksite or from one consumer's worksite to another, and only  
5 when the travel is one way.

6 (b) ~~The~~ *Except as provided in subdivision (f), the hourly rate*  
7 for group services shall be thirty dollars and eighty-two cents  
8 (\$30.82), regardless of the number of consumers served in the  
9 group. Consumers in a group shall be scheduled to start and end  
10 work at the same time, unless an exception that takes into  
11 consideration the consumer's compensated work schedule is  
12 approved in advance by the regional center. The department, in  
13 consultation with stakeholders, shall adopt regulations to define  
14 the appropriate grounds for granting these exceptions. When the  
15 number of consumers in a supported employment placement group  
16 drops to fewer than the minimum required in subdivision (r) of  
17 Section 4851, the regional center may terminate funding for the  
18 group services in that group, unless, within 90 days, the program  
19 provider adds one or more regional centers, or Department of  
20 Rehabilitation-funded supported employment consumers to the  
21 group.

22 (c) Job coaching hours for group services shall be allocated on  
23 a prorated basis between a regional center and the Department of  
24 Rehabilitation when regional center and Department of  
25 Rehabilitation consumers are served in the same group.

26 (d) When Section 4855 applies, fees shall be authorized for the  
27 following:

28 (1) A three-hundred-sixty-dollar (\$360) fee shall be paid to the  
29 program provider upon intake of a consumer into a supported  
30 employment program. No fee shall be paid if that consumer  
31 completed a supported employment intake process with that same  
32 supported employment program within the previous 12 months.

33 (2) A seven-hundred-twenty-dollar (\$720) fee shall be paid  
34 upon placement of a consumer in an integrated job, except that no  
35 fee shall be paid if that consumer is placed with another consumer  
36 or consumers assigned to the same job coach during the same hours  
37 of employment.

38 (3) A seven-hundred-twenty-dollar (\$720) fee shall be paid after  
39 a 90-day retention of a consumer in a job, except that no fee shall  
40 be paid if that consumer has been placed with another consumer

1 or consumers, assigned to the same job coach during the same  
2 hours of employment.

3 (e) Notwithstanding paragraph (4) of subdivision (a) of Section  
4 4648, the regional center shall pay the supported employment  
5 program rates established by this section.

6 (f) *The department shall increase the hourly rates established*  
7 *under subdivisions (a) and (b) to implement the rate increase*  
8 *provided pursuant to the operation of Section 4793.*

9 SEC. 10. Section 14105.194 is added to the Welfare and  
10 Institutions Code, to read:

11 14105.194. (a) Notwithstanding Sections 14105.07, 14105.191,  
12 14105.192, and 14105.193, payments to providers and managed  
13 care health plans that contract with the department pursuant to this  
14 chapter or Chapter 8 (commencing with Section 14200) shall be  
15 increased pursuant to the operation of Section 4793.

16 (b) The director shall implement this section to the maximum  
17 extent permitted by federal law and for the maximum time period  
18 for which the director obtains federal approval for federal financial  
19 participation for the increases provided for in Section 4793 and  
20 this section.

21 (c) The director shall promptly seek all necessary federal  
22 approvals to implement this section.

23 SEC. 11. The Legislature declares that the changes made by  
24 this act are not intended to result in the substantial impairment of  
25 any contract. To the extent any contract would be substantially  
26 impaired as a result of the application of any change made by this  
27 act, it is the intent of the Legislature that the change apply only to  
28 contracts renewed or entered into on or after the date this act  
29 becomes effective.

30 SEC. 12. This act is an urgency statute necessary for the  
31 immediate preservation of the public peace, health, or safety within  
32 the meaning of Article IV of the Constitution and shall go into  
33 immediate effect. The facts constituting the necessity are:

34 In order to increase funding for community services provided  
35 to individuals with intellectual or developmental disabilities and  
36 to increase reimbursement rates for Medi-Cal providers at the  
37 earliest possible time, it is necessary that this act take effect  
38 immediately.

O